

Indian tribal government upon determination by the Internal Revenue Service that the governing body exercises governmental functions. Designation of a governing body as an Indian tribal government will be by revenue procedure. If a governing body is not currently designated by the applicable revenue procedure as an Indian tribal government, and such governing body believes that it qualifies for such designation, the governing body may apply for a ruling from Internal Revenue Service. In order to qualify as an Indian tribal government, for purposes of section 7701(a)(40) and this section, such governing body must receive a favorable ruling from the Internal Revenue Service. The request for a ruling shall be made in accordance with all applicable procedural rules set forth in the Statement of Procedural Rules (26 CFR part 601) and any applicable revenue procedures relating to the submission of ruling requests. The request shall be submitted to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:IND:S, room 6545, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

(b) *Effective date.* The provisions of this section are effective after December 31, 1982.

**§ 305.7871-1 Indian tribal governments treated as States for certain purposes.**

(a) *In general.* An Indian tribal government, as defined in section 7701(a)(40) and the regulations thereunder, shall be treated as a State, and a subdivision of an Indian tribal government, as determined under section 7871(d) and paragraph (e) of this section, shall be treated as a political subdivision of a State, under the following sections and regulations thereunder—

(1) Section 170 (relating to income tax deductions for charitable, etc., contributions and gifts), sections 2055 and 2106(a)(2) (relating to estate tax deductions for transfers of public, charitable, and religious uses), and section 2522 (relating to gift tax deductions for charitable and similar gifts), for purposes of determining whether and in what amount any contribution or transfer to or for the use of an Indian

tribal government (or subdivision thereof) is deductible;

(2) Section 164 (relating to deductions for taxes);

(3) Section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

(4) Section 37(e)(9)(A) (relating to certain public retirement systems);

(5) Section 41(c)(4) (defining “State” for purposes of credit for contributions to candidates for public offices);

(6) Section 117(b)(2)(A) (relating to scholarships and fellowship grants);

(7) Section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities);

(8) Chapter 41 of the Code (relating to tax on excess expenditures to influence legislation); and

(9) Subchapter A of chapter 42 of the Code (relating to private foundations).

(b) *Special rule for excise tax provisions.* An Indian tribal government shall be treated as a State, and a subdivision of an Indian tribal government shall be treated as a political subdivision of a State, for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed on a transaction under—

(1) Chapter 31 of the Code (relating to tax on special fuels);

(2) Chapter 32 of the Code (relating to manufacturers excise taxes);

(3) Subchapter B of chapter 33 of the Code (relating to communications excise tax); and

(4) Subchapter D of chapter 36 of the Code (relating to tax on use of certain highway vehicles), if, in addition to satisfying all requirements applicable to a similar transaction involving a State (or political subdivision thereof) under the Code, the transaction involves the exercise of an essential governmental function of the Indian tribal government, as defined in paragraph (d) of this section.

(c) *Special rule for tax-exempt bonds.* An Indian tribal government shall be treated as a State and a subdivision of an Indian tribal government shall be treated as a political subdivision of a State for purposes of any obligation

issued by such government or subdivision under section 103 (relating to interest on certain governmental obligations) if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of an essential governmental function, as defined in paragraph (d) of this section. For purposes of section 7871 and this section, the “substantially all” test is the same as that provided in § 1.103-8(a)(1)(i). An Indian tribal government shall not be treated as a State and a subdivision of an Indian tribal government shall not be treated as a political subdivision of a State, however, for issues of the following private activity bonds—

(1) An industrial development bond (as defined in section 103(b)(2));

(2) An obligation described in section 103(1)(1)(A) (relating to scholarship bonds); or

(3) A mortgage subsidy bond (as defined in section 103A(b)(1), without regard to section 103A(b)(2)).

(d) *Essential governmental function.* For purposes of section 7871 and this section, an essential governmental function of an Indian tribal government (or portion thereof) is a function of a type which is—

(1) Eligible for funding under 25 U.S.C. 13 and the regulations thereunder;

(2) Eligible for grants or contracts under 25 U.S.C. 450 (f), (g), and (h) and the regulations thereunder; or

(3) An essential governmental function under section 115 and the regulations thereunder when conducted by a State or political subdivision thereof.

(e) *Treatment of subdivisions of Indian tribal governments as political subdivisions.* A subdivision of an Indian tribal government shall be treated as a political subdivision of a State for purposes of section 7871 and this section if the Internal Revenue Service determines that the subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government. Designation of a subdivision of an Indian tribal government as a political subdivision of a State will be by revenue procedure. If a subdivision of an Indian tribal government is not currently designated by the applicable revenue procedure as a

political subdivision of a State, and such subdivision believes that it qualifies for such designation, the subdivision may apply for a ruling from the Internal Revenue Service. In order to qualify as a political subdivision of a State, for purposes of section 7871 and this section, such subdivision must receive a favorable ruling from the Internal Revenue Service. The request for a ruling shall be made in accordance with all applicable procedural rules set forth in the Statement of Procedural Rules (26 CFR part 601) and any applicable revenue procedures relating to submission of ruling requests. The request shall be submitted to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:IND:S, Room 6545, 1111 Constitution Ave., NW., Washington, D.C. 20224.

(f) *Effective dates*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, the provisions of this section are effective after December 31, 1982.

(2) *Specific effective dates.* Specific provisions of this section are effective as follows:

(i) Provisions relating to chapter 1 of the Internal Revenue Code of 1954 (other than section 103 and section 37(e)(9)(A)) shall apply to taxable years beginning after December 31, 1982, and before January 1, 1985;

(ii) Provisions relating to section 37(e)(9)(A) shall apply to taxable years beginning after December 31, 1982, and before January 1, 1984;

(iii) Provisions relating to section 103 shall apply to obligations issued after December 31, 1982, and before January 1, 1985;

(iv) Provisions relating to chapter 11 of the Code shall apply to estates of decedents dying after December 31, 1982, and before January 1, 1985;

(v) Provisions relating to chapter 12 of the Code shall apply to gifts made after December 31, 1982, and before January 1, 1985; and

(vi) Provisions relating to taxes imposed by subtitle D of the Code shall take effect on January 1, 1983 and shall cease to apply at the close of December 31, 1984.

**PARTS 306-399 [RESERVED]**